

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: INSULIN PRICING
LITIGATION**

**Case No. 2:23-md-3080 (BRM)(RLS)
MDL No. 3080**

**JUDGE BRIAN R. MARTINOTTI
JUDGE RUKHSANAH L. SINGH**

THIS DOCUMENT RELATES TO: 2:25-CV-00206,
2:25-CV-00211,
2:25-CV-00221,
2:25-CV-00371,
2:25-CV-00428,
2:25-CV-00443,
2:25-CV-00457,
2:25-CV-00458,
2:25-CV-00460,
2:25-CV-00469,
2:25-CV-00472,
2:25-CV-00473,
2:25-CV-00524,
2:25-CV-00537,
2:25-CV-00546
(SELF-FUNDED PAYERS TRACK)

MOTION FOR ENTRY OF ORDER TO SHOW CAUSE

TO THE HONORABLE COURT:

NOW COME Defendants Eli Lilly And Company; Novo Nordisk Inc.; Sanofi-Aventis U.S. LLC; CVS Pharmacy, Inc.; Caremark Rx, LLC; Caremark LLC; CaremarkPCS Health, LLC; Express Scripts, Inc.; Express Scripts Administrators, LLC; Medco Health Solutions, Inc.; ESI Mail Pharmacy Services, Inc.; Express Scripts Pharmacy, Inc.; and OptumRx, Inc (collectively “Defendants”), through their undersigned attorneys, and respectfully submit this Motion for Entry of an Order to Show Cause pursuant to Case Management Order No. 14 (“CMO No. 14”) ¶ 5(c)(i) (Dkt. 315). A proposed Order is attached as **Exhibit A**.

This Court entered CMO No. 14 on October 16, 2024—more than six months ago. In direct violation of that order, fifteen Plaintiffs—thirteen represented by Frantz Law Group, APLC (“Frantz Plaintiffs”),¹ one represented by Kelly &

¹ “Frantz Plaintiffs” refers to Waukegan Community Unit School District (2:25-CV-00206), Big Spring School District (2:25-CV-00211), Washington School District (2:25-CV-00371), Girard City Schools (2:25-CV-00221), Peters Township School District (2:25-cv-00428); Stewart County (2:25-CV-00443), North Summit School District (2:25-cv-00458); Cache County School District (2:25-cv-00460); Benton Harbor Area Schools (2:25-cv-00469); Malcolm Public Schools (2:25-cv-00472); Ashland County (2:25-cv-00473); 1978 Retired Construction Workers Fund (2:25-cv-00524); Rootstown Local School District (2:25-cv-00537); and Northwestern Local School District (2:25-cv-00546). Defendants group these Plaintiffs together according to their shared counsel pursuant to CMO 14 ¶ 5(c)(i).

Grossman, LLP (“Kelly Plaintiffs”),² and one represented by Kelley Ferraro, LLC (“Ferraro Plaintiff”)³—failed to serve executed Plaintiff Fact Sheets (“PFS”) within the time required by CMO 14 or any agreed extension. Pursuant to CMO 14 ¶ 5(c)(i), Defendants respectfully request this Court to issue an Order to Show Cause why these fifteen Plaintiffs’ cases should not be dismissed in their entirety.

I. BACKGROUND

The Self-Funded Payer Plaintiffs advocated for a PFS process, rather than typical Federal Rules of Civil Procedure discovery, claiming it “would streamline the process for exchanging core information necessary to move this” MDL forward. ECF No. 270 at 9. The Court granted Plaintiffs’ request and ordered “[e]ach Plaintiff in the Self-Funded Payer Track” to “complete and provide documents responsive to the PFS” by a specified deadline. CMO 14 ¶ 1(a). The Court required each plaintiff to disclose their individual facts, given the goal of “narrowing the issues and/or cases for prioritization or further proceedings.” ECF No. 291 at 2, 9. If a plaintiff fails to serve its PFS response by the required deadline, Defendants may serve a Notice of Failure to Serve and, after 14 days, move for an Order to Show Cause. *Id.* ¶ 5(c)(i).

² “Kelly Plaintiff” refers to 1978 Retired Construction Workers Fund (2:25-cv-00524).

³ “Ferraro Plaintiff” refers to Boilermakers Local 744 Health & Welfare Fund (2:25-cv-00457).

If a plaintiff still fails to serve the PFS by the deadline under that Order, its complaint shall be dismissed. *Id.* ¶ 5(c)(ii).

Pursuant to CMO 14, each of the fifteen Plaintiffs was required to serve an executed PFS no later than March 17, March 21, March 31, April 1, or April 7, 2025. This accounts for the fact that the Ferraro Plaintiff and twelve of the thirteen Frantz Plaintiffs requested an extension, which Defendants granted. None of these fifteen Plaintiffs served PFS responses by their required deadline even with the extensions. Accordingly, Defendants served Notices of Failure to Serve pursuant to CMO 14 ¶ 5(b)(i) on March 18, March 24, April 1, April 2, and April 8, 2025. *See* Exs. B-P. Each Notice was served via email to Plaintiffs' attorneys of record, William B. Shinoff of Frantz Law Group, David Grossman of Kelly & Grossman, and Joyce Reichard of Kelley Ferraro LLC with a courtesy copy to the Co-Lead Counsel's designees, David Buchanan of Seeger Weiss; Mark Pifko of Baron Budd; Brandon Bogle of Levin Papantonio; and Benjamin Widlanski of Kozyak Tropin & Throckmorton. Plaintiffs ignored the notice; they still have not served their PFS responses, requested an extension or further extension, or in any way responded. *See* CMO 14 ¶ 5(b)(ii).

II. ARGUMENT

Pursuant to CMO 14 ¶ 5(c), Defendants request the Court issue an Order to Show Cause requiring Plaintiffs to serve a completed PFS within 14 days. A prompt

Order setting a 14-day deadline is particularly warranted in the case of the Frantz Plaintiffs, whose counsel's actions are part of a much broader pattern of disregard for the Court's PFS Orders. *See* ECF No. 464 at 2-3.

Frantz plaintiffs have repeatedly missed PFS deadlines, wasting the Court's time and resources. This is Defendants' third request that an Order to Show Cause be issued against a group of plaintiffs represented by Frantz Law Group; Defendants have now sought that relief against a total of 30 such plaintiffs. *See* ECF No. 449, 478. The Court granted the first of Defendants' motions (the second remains pending), and Frantz's deadline to respond to the Court's Order has now passed. ECF No. 484. Only *one* of the relevant Plaintiffs served its PFS prior to the Court's deadline. *See* ECF No. 508. Even the Self-Funded Payers Track's leadership has acknowledged Frantz's ongoing non-compliance with the Court's orders. *See* ECF No. 470 at 2 (referring to a "single law firm that has filed a high volume of cases" and failed to comply with the Court's orders).

Plaintiffs' failure to provide PFS responses violates CMO 14, defeats the streamlined discovery process the Court ordered, and delays the "identif[ication of the] core issues" in the MDL. *See* ECF No. 291 at 12. To keep discovery moving in an efficient manner, Defendants respectfully ask the Court to enforce CMO 14 by requiring the Frantz Plaintiffs, Kelly Plaintiff, and Ferraro Plaintiff to each promptly

serve an executed and substantially complete PFS within 14 days, or have their complaints dismissed. See CMO 14 ¶ 5(c)(i).

III. CONCLUSION

As provided by the Court's CMO 14, Defendants respectfully request that the Court enter an Order to Show Cause with a 14-day deadline as to these fifteen Plaintiffs that failed to serve a PFS pursuant to CMO 14.

Dated: April 23, 2025

/s/ Brian W. Carroll

MCCARTER & ENGLISH, LLP

Brian W. Carroll
Four Gateway Center
100 Mulberry St.
Newark, NJ 07102
(973) 639-2020
bcarroll@mccarter.com

DAVIS POLK & WARDWELL LLP

James P. Rouhandeh (*pro hac vice*)
David B. Toscano (*pro hac vice*)
450 Lexington Ave.
New York, NY 10017
(212) 450-4000
rouhandeh@davispolk.com
david.toscano@davispolk.com

DAVIS POLK & WARDWELL LLP

Neal A. Potischman (*pro hac vice*)
Andrew Yaphe (*pro hac vice*)
1600 El Camino Real
Menlo Park, CA 94025
(650) 752-2000
neal.potischman@davispolk.com
andrew.yaphe@davispolk.com

*Attorneys for Defendant Novo Nordisk
Inc.*

Respectfully submitted,

/s/ Liza M. Walsh

**WALSH PIZZI O'REILLY FALANGA
LLP**

Liza M. Walsh
Katelyn O'Reilly
Three Gateway Center
100 Mulberry St., 15th floor
Newark, NJ 07102
(973) 757-1100
lwalsh@walsh.law
koreilly@thewalshfirm.com

JONES DAY

Michael R. Shumaker (*pro hac vice*)
Julie E. McEvoy (*pro hac vice*)
William D. Coglianese (*pro hac vice*)
Melissa L. Patterson (*pro hac vice*)
51 Louisiana Ave. NW
Washington, DC 20001
(202) 879-3939
mrshumaker@jonesday.com
jmcevoy@jonesday.com
wcoglianese@jonesday.com
mpatterson@jonesday.com

*Attorneys for Defendant Sanofi-
Aventis U.S. LLC*

/s/ Melissa A. Geist

REED SMITH LLP

Melissa A. Geist
Julia A. López
506 Carnegie Center, Suite 300
Princeton, NJ 08540
(609) 514-5978
mgeist@reedsmith.com
jalopez@reedsmith.com

KIRKLAND & ELLIS LLP

James F. Hurst (*pro hac vice*)
Andrew A. Kassof (*pro hac vice*)
Robert B. Ellis (*pro hac vice*)
Diana M. Watral (*pro hac vice*)
Ryan Moorman (*pro hac vice*)
Jason A. Feld (*pro hac vice*)
333 West Wolf Point Plaza
Chicago, IL 60654
(312) 862-2000
james.hurst@kirkland.com
akassof@kirkland.com
rellis@kirkland.com
diana.watral@kirkland.com
ryan.moorman@kirkland.com
jason.feld@kirkland.com

*Attorneys for Defendant Eli Lilly and
Company*

/s/ Brian Boone

O'TOOLE SCRIVO, LLC

Thomas P. Scrivo
Young Yu
14 Village Park Road
Cedar Grove, NJ 07009
(973) 239-5700
tscrivo@oslaw.com
yyu@oslaw.com

ALSTON & BIRD LLP

Brian D. Boone
1120 S. Tyron St., Ste. 300
Charlotte, NC 28203
(704) 444-1000
brian.boone@alston.com

ALSTON & BIRD LLP

Elizabeth Broadway Brown
1201 W. Peachtree St. NW, Ste. 4900
Atlanta, GA 30309
(404) 881-7000
liz.brown@alston.com

ALSTON & BIRD LLP

Kelley Connolly Barnaby
950 F. Street, NW
Washington, D.C. 20004
(202) 239-3300
kelley.barnaby@alston.com

Attorneys for Defendant OptumRx, Inc.

/s/ Jason R. Scherr

MORGAN, LEWIS & BOCKIUS LLP

Jason R. Scherr
Patrick A. Harvey
Elise M. Attridge
Lindsey T. Levy
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000
jr.scherr@morganlewis.com
patrick.harvey@morganlewis.com
elise.attridge@morganlewis.com
lindsey.levy@morganlewis.com

*Attorneys for Defendants Express
Scripts, Inc.; Express Scripts
Administrators, LLC; ESI Mail
Pharmacy Service, Inc.; Express
Scripts Pharmacy, Inc.; and Medco
Health Solutions, Inc.*

/s/ Benjamin Hazelwood

MARINO, TORTORELLA & BOYLE, P.C.

Kevin H. Marino

John D. Tortorella

437 Southern Boulevard

Chatham, New Jersey 07928

(973) 824-9300

kmarino@khmarino.com

jtortorella@khmarino.com

WILLIAMS & CONNOLLY LLP

Enu Mainigi

Craig Singer

R. Kennon Poteat III

A. Joshua Podoll

Benjamin Hazelwood

Daniel Dockery

680 Maine Avenue, S.W.

Washington, D.C. 20024

(202) 434-5000

emainigi@wc.com

csinger@wc.com

kpoteat@wc.com

apodoll@wc.com

bhazelwood@wc.com

ddockery@wc.com

Attorneys for Defendants CVS

Pharmacy, Inc.; Caremark Rx, L.L.C.;

CaremarkPCS Health, L.L.C.; and

Caremark, L.L.C.